

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

EARL RICHARDSON,

Plaintiff,

:

Case No. 3:09-cv-455

- vs -

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

INDUSTRIAL COMMISSION OF OHIO,  
Et al.

Defendants.

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**REPORT AND RECOMMENDATIONS**

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This case is before the Court on Plaintiff's Motion for Leave to Appeal *in forma pauperis* (Doc. No. 39).

On September 3, 2013, the undersigned recommended that Plaintiff's Motion for an Order to Release Compensation and Benefits, construed as a motion for relief from judgment, be denied for reasons already given in a parallel case, *Richardson v. Dayton Public Schools*, Case No. 3:10-cv-028. Judge Rose adopted that recommendation over Plaintiff's Objections (Doc. Nos. 35, 36), and Plaintiff has now appealed.

In his Motion, Plaintiff clearly establishes that he is unable to pay the appellate filing fee of \$455.00 with hardship. At the same time, he has not advised the Court of what issues he intends to raise on appeal.

Judgment became final in this case on February 8, 2011, when the Sixth Circuit affirmed this Court's decision dismissing the case with prejudice. Plaintiff sought and received an extension of time from Justice Kagan to file a petition for writ of certiorari in the Supreme Court, but never did so. His motion for relief from judgment was not filed until more than two years later and relied upon medical evidence which came into existence earlier this year. As the Court has explained to Plaintiff, that is not a basis for reopening the judgment under Fed. R. Civ. P. 60(b), even if the motion had been timely.

Because Plaintiff has not suggested any appealable issue, his Motion for *in forma pauperis* status should be denied and this Court should certify to the Sixth Circuit that his appeal is objectively frivolous.

November 19, 2013.

s/ **Michael R. Merz**  
United States Magistrate Judge

#### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).